

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

BUDGET BLINDS, INC.,

Plaintiff,

v.

**VALERIE WHITE, BUDGET BLINDS OF NJ,
INC., VAL U BLINDS, INC.,**

Defendants.

05-CV-0388(WJM)

ORDER

THIS MATTER comes before the Court on Defendants' petition, dated October 16, 2007, to re-open the trial court record to allow for additional discovery. (Docket Entry #35.) Alternatively, Defendant asks the Court to extend the time to file an appeal in order to allow for completion of the record. (Docket Entry #37.) Plaintiff has submitted a letter in opposition to Defendants' request to re-open the record. (Docket Entry #36.)

On September 17, 2008, this Court granted Defendant's motion to vacate default judgment. After the granting of the motion to vacate, Plaintiffs then filed a notice of appeal to the United States Court of Appeals for the Third Circuit on October 15, 2008. Defendants filed the instant motion the next day.

The Court no longer has jurisdiction over this matter. The filing of a notice of appeal divested this Court of its control over the instant case and conferred jurisdiction on the United States Court of Appeals for the Third Circuit. *See Venen v. Sweet*, 758 F.2d

117, 120 (3d Cir. 1985). Defendants now request that this Court re-open the record in a case over which it currently does not have jurisdiction, which the Court cannot do.

Further, the re-opening of the record at this point will not complete the record before the Court of Appeals. The record on appeal is the record that was before this Court in deciding the motion to vacate default judgment. *F. R. App. P. 10(a)*. Further discovery obtained after the issuance of this Court's order granting the motion to vacate the default judgment would not be a proper part of the record on appeal.

Finally, Defendant's request to extend the time to file an appeal is untimely. This Court entered its order granting the motion to vacate default judgment on September 17, 2007. The parties had thirty days after the entry of judgment to make a motion to extend the time in which to appeal, 28 U.S.C. § 2107(a), and the instant request is outside this thirty-day window. For the foregoing reasons, and for good cause appearing;

IT IS on this 31st day of October 2008, hereby

ORDERED that Defendants' request to re-open the record before this Court to allow for additional discovery is **DENIED**; it is

FURTHER ORDERED that Defendants' request to extend the time to file an appeal is **DENIED**.

/s/ William J. Martini
WILLIAM J. MARTINI, U.S.D.J.